



**U.S. Citizenship
and Immigration
Services**

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 10875689

Date: SEPT. 2, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner seeks to employ the Beneficiary as a manager, enterprise operations, supply chain networks under the second-preference, immigrant classification for members of the professions with advanced degrees or their equivalents. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

The Director of the Nebraska Service Center denied the petition, concluding that the offered position did not require an advanced degree or equivalent and was ineligible for classification as an advanced degree professional.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as an advanced degree professional generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). See section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id.* Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). See section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, a foreign national may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. See section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

The Petitioner requests classification of the Beneficiary as an advanced degree professional.¹ The regulation at 8 C.F.R. § 204.5(K)(2) defines the term “advanced degree” as:

any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.

Here, the accompanying labor certification states the minimum requirements of the offered position of manager, enterprise operations, supply chain networks as follows:

H.4	Education: minimum level	Bachelor's
H.4-B	Major field of study	See H.14
H.5	Training required?	No
H.6	Experience in the job offered required?	Yes
H.6-A	Number of months	60
H.7	Alternate field of study acceptable?	Yes
H.7-A	Major field of study	See H.14
H.8	Alternate combination of education and experience acceptable?	Yes
H.8-A	Level of alternate education	Bachelor's
H.8-C	Number of years experience acceptable	3
H.9	Foreign educational equivalent acceptable?	Yes
H.10	Experience in an alternate occupation acceptable?	Yes
H.10-A	Number of months experience required	60
H.10-B	Job title of alternate occupation	See H.14
H.14		*

* Bachelor's degree or foreign equivalent degree in Engineering (any), Business Administration, MIS, CIS or a related field. Five years of progressively responsible experience as a Manager, Junior Manager, Senior Consultant or a position in a related occupation. Must have five years of experience with: Managing client communication and relationship in addition to delivery management in terms of development of project charters, workplans, budgets, resourcing plans, and business

¹ The Petitioner has filed a subsequent immigrant petition in this matter under the professional category based on the same labor certification, which has been approved.

cases using Microsoft Project; Developing business plans, commercial plans and solution/product development roadmaps; Transforming planning functions using Sales and Operations Planning (S&OP) methodology and managing Demand, Supply and Inventory Planning by defining processes and Key Performance Indicators (KPIs); Employing Supply Chain Operations Reference (SCOR) and APICS frameworks to render recommendations on strategic business model transformations, data based analytical insights, cross-functional strategies and management changes; Designing future state supply chain and planning organization for market expansion based on global leading practices and analytical insights to analyze the bottom up based market size, market penetration and competitor analysis; Managing the work stream on identification of opportunities to leverage SAP capabilities to optimize internal material flow, ensuring efficient Work in Process (WIP), Finished Goods (FG) inventory control and an effective warehouse management and executing delivery through business requirement workshops, functional and process design, testing between business and technology functions, and developing business requirements documents for technology implementation (SAP APO). In the alternative, the employer will accept a Master's degree or foreign equivalent degree in the stated field plus three years of experience. Any suitable combination of education, training or experience is acceptable. 80% travel required. 80% travel required to various unanticipated [redacted] office locations and client sites nationally.

The Director found that the offered position does not require a bachelor's degree with five years of experience, since the alternate combination of education and experience required only a bachelor's degree and three years of experience. The Director concluded that the labor certification did not support the requested immigrant visa classification of advanced degree professional and denied the petition.

On appeal the Petitioner asserts that it made an inadvertent typographical error in preparing the labor certification, and that the intended alternate requirement for the offered position is a U.S. master's degree or a foreign equivalent degree and three years of qualifying experience. In support of this assertion, the Petitioner provides supporting documents for the labor certification, including the application for wage determination and recruiting materials for the offered position. The Petitioner also notes that the alternate requirement for the offered position was properly expressed in an addendum to the labor certification as: a master's degree or foreign equivalent degree in the stated field plus three years of experience. See section H, subsection 14 of the labor certification.

The regulation at 20 C.F.R. § 656.11(b) bars modifications to labor certification applications filed on or after July 16, 2007. Once a labor certification has been certified, whether to allow an amendment such as the one requested by the Petitioner is solely within DOL's certifying officer's discretion. General Electric Company (GE Consumer & Industrial), 2011-PER-01818 (BALCA April 15, 2014). Here, the Petitioner does not assert that it attempted to request correction of the typographical error before the DOL at any time during the labor certification process.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine "the language of the labor

certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer exactly as it is completed by the prospective employer. See *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying the plain language of the alien employment certification application form. See *id.* at 834. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm'r 1986). We cannot read or interpret the labor certification other than how it was certified.

The Petitioner's purported error on the accompanying labor certification goes beyond an inadvertent, typographical error. The Petitioner affirmatively stated on the labor certification that the offered position could be filled by an applicant who possesses a U.S. bachelor's degree or a foreign equivalent degree and three years of qualifying experience. The Petitioner specifically cross-referenced H.14 in a number of places, H.4.B, H.7.A, and H.10.B, but did not do so in H.8, the question related to alternate requirements. Therefore, H.8 might represent a third acceptable variant of the Petitioner's requirements.

We note that Section N of the labor certification states that the employer takes full responsibility for the accuracy of the information contained therein. Moreover, as the DOL made clear in the preamble to the Proposed Rule, Reducing Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity, Permanent Labor Certification Program, 71 Fed. Reg. 7655 (Feb. 13, 2006), "[u]nder proposed 656.11(b), DOL clarifies that requests for modification to an application submitted under the current regulation will not be accepted Nothing in the streamlined regulation contemplates allowing or permits employers to make changes to applications after filing." The preamble goes on to highlight that:

The online application system is designed to allow users to proofread and revise before submitting the application, and the Department expects and assumes that users will do so. Moreover, in signing the application the employer declares under penalty of perjury that he or she has read the application and the submitted information is true and accurate to the best of his or her knowledge. In the event of an inadvertent error or any other need to refile, an employer can withdraw an application, make the corrections and file again immediately In addition, the entire application is a set of attestations and freely allowing changes undermines the integrity of the labor certification process because changing one answer on an application could impact analysis of the application as a whole.

Id. Here, the attempt to change the answer from "bachelor's" to "master's" in question H.8 materially changes the requirements of the offered position and impacts the analysis of the labor certification as a whole. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

The accompanying labor certification states that the minimum requirements for the offered position are less than a bachelor's degree with five years of experience. Therefore, the Petitioner has not established that the minimum requirements of the offered position, as defined by the terms of the accompanying labor certification, are an advanced degree pursuant to 8 C.F.R. § 204.5(K)(2).

ORDER: The appeal is dismissed.